STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 21, 2002
v	No. 231226 Wayne Circuit Court
SHANE C. LAVACK, Defendant-Appellant.	LC No. 00-003284

Before: Smolenski, P.J., and Neff and White, JJ.

PER CURIAM.

Defendant appeals as of right his convictions of two counts of reckless driving, MCL 257.626, and operating a vehicle while under the influence of liquor (OUIL), MCL 257.625. We affirm.

I

Defendant first contends that his convictions of reckless driving violate his constitutional right to due process because he did not have adequate notice that he would have to defend against these offenses, where reckless driving was not charged and was not a lesser included offense. We disagree.

Due process entitles a defendant to reasonable notice of a charge against him and an opportunity to be heard in his defense. *People v Darden*, 230 Mich App 597, 600; 585 NW2d 27 (1998). Although a trial court may consider lesser offenses sua sponte, it may not convict a defendant of a crime that has not been charged unless the defendant has adequate notice. *People v James*, 142 Mich App 225, 227; 369 NW2d 216 (1985); *People v Quinn*, 136 Mich App 145, 147; 356 NW2d 10 (1984).

In *People v Ora Jones*, 395 Mich 379, 388; 236 NW2d 461 (1975), the Court considered due process notice requirements in regard to jury instructions on lesser included offenses, and noted United States Supreme Court guidance that "notice requirements are met if the greater charged crime and the lesser included offense are of the same or of an overlapping nature." In the context of jury instruction, the Court stated:

> If the lesser offense is of the same class or category, or closely related to the originally charged offense, so as to provide fair notice to the defendant that he

> will be required to defend against it, the lesser offense is or may be included within the greater. [*Id.*]

Following the guidance in *Ora Jones,* this Court has subsequently recognized that notice is generally adequate if the offense of which the defendant is convicted is a lesser included offense of the original charge. *James, supra* at 227; *Quinn, supra* at 147. Courts generally also consider the evidence in a given case as a factor in notice. *Ora Jones, supra* at 389-390; *People v Adams*, 202 Mich App 385, 388; 509 NW2d 530 (1993).

We conclude that notice of the lesser included offense was adequate in this case. Defendant was charged with felonious assault on the basis of allegedly erratically driving a pick-up truck through a crowd of people in the parking lot of a bar and striking three individuals. "The elements of felonious assault are (1) an assault, (2) with a dangerous weapon, and (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery." *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). An automobile may be used as a "dangerous weapon" for purposes of the felonious assault statute. *People v Sheets*, 138 Mich App 794, 799; 360 NW2d 301 (1984). A person who drives any vehicle in a place open to the general public, including an area designated for parking motor vehicles, "in willful or wanton disregard for the safety of persons or property" is guilty of reckless driving. MCL 257.626.

Given the factual circumstances, that defendant was alleged to have driven the truck in an erratic manner, striking people and property, in effect using the car as a weapon, the greater offense and the lesser offense are related. The charge of assaulting persons with a vehicle under these facts encompasses willful or wanton disregard for the safety of others. Given the evidence, the offenses of felonious assault and reckless driving are of the same or overlapping nature. *Ora Jones, supra* at 388. Defendant's argument that notice was inadequate because the two offenses share no common element and are unrelated is without merit.

II

Defendant next contends that the trial court's failure to address the defense of duress in its findings violated defendant's rights to due process and requires reversal of his convictions. We find no error. Defendant did not raise the defense of duress, and, thus, the trial court was not required to make findings with regard to duress. Defendant has forfeited this issue for appellate review. *People v Sherman-Huffman*, 241 Mich App 264, 267; 615 NW2d 776 (2000).

Regardless, we find defendant's claim without merit. As defendant notes, the trial court acknowledged defendant's "excuse" for *the manner in which he was driving*. Defendant testified that the reason that he slid into the driver's seat and drove was that he was being attacked and he tried to flee from the attack. The "excuse" argued by defense counsel in closing argument was that defendant "was battered, assaulted, he fled for his life." The court's findings adequately addressed defendant's testimony and argument. Findings are sufficient if it appears that the trial court was aware of the issues in the case and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995). The sufficiency of findings must be reviewed in the context of the specific legal and factual issues raised by the parties and the evidence. *People v Rushlow*, 179 Mich App 172, 177; 445 NW2d 222 (1989), aff'd 437 Mich 149; 468 NW2d 487 (1991).

Affirmed.

/s/ Michael R. Smolenski
/s/ Janet T. Neff
/s/ Helene N. White